
1996 Wis Eth Bd 12
LOCAL CODE - DISQUALIFICATION

A member of a local unit of government's legislative body should not simultaneously serve, in a private capacity, as an officer or director of the tourism organization and participate, in a governmental capacity, in discussions or votes to establish a room tax to support the organization financially.

A member of a local unit of government's legislative body to whose business the tourism organization will furnish a substantial benefit through the use of room tax revenues should not participate in discussions or votes to establish a room tax.

OEB 96-12 (July 31, 1996)

Facts

[1] This opinion is based upon these understandings:

- a. You are the attorney for a local unit of government.
- b. The local government's legislative body is considering a resolution that would lead to the establishment of a room tax.
- c. If created, the local government would contract with a local tourism organization to direct room tax receipts to the organization for promotional activities.
- d. The tourism organization is a private, not for profit organization whose membership is primarily made up of business people in the tourism industry in the area.
- e. A number of members of the local government's legislative body are connected with the tourism organization in the following ways: as a member, as an officer or director, and as an alternate director having the right to vote as a director in a director's absence.

Questions

[2] The Ethics Board understands your question to be:

May a member of the local government's legislative body who is a member, officer, director, or alternate director of the tourism organization participate in discussions or votes to establish a room tax when the organization will receive a substantial portion of the room tax receipts for promotional efforts?

Discussion

[3] Section 19.59(1), *Wisconsin Statutes*, provides that no local public official may use his or her public position or office to obtain financial gain, anything of substantial value, or a substantial benefit for an organization with which the official is associated or take any official action substantially affecting a matter in which an organization with which the official is associated has a substantial financial interest.¹

Officers and directors of the tourism organization

[4] A member of a local unit of government's legislative body is a local public official subject to §19.59.² Participating as a member of such body in discussions, deliberations, or votes on an issue before it is a use of office. *See*,

¹ Section 19.59(1), *Wisconsin Statutes*, provides:

19.59 Codes of ethics for local government officials, employees and candidates. (1)(a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. A violation of this paragraph includes the acceptance of free or discounted admissions to a professional baseball game by a member of the district board of a local professional baseball park district created under subch. III of ch. 229. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

* * *

(c) Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.
2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

² Under §19.42(7u), (7w), and (7x), *Wisconsin Statutes*, a local public official includes an individual that holds an elective office of a political subdivision of the state.

e.g., 1992 Wis Eth Bd 22. The tourism organization is an “organization.”³ A member of a local unit of government’s legislative body is associated with the tourism organization if the member, in his or her private capacity, is an officer or director of the organization.⁴ The statute makes no distinction among types or classes of directors; thus, an alternate director also would appear to be associated with the tourism organization within the meaning of the statute.⁵ Room tax revenues have substantial value for the tourism organization; it is our understanding that, among other purposes, revenues will be used for the direct benefit of the organization in defraying the organization’s costs and in promoting the business of the organization’s members. Therefore, we advise that a member of a local unit of government’s legislative body should not simultaneously serve, in a private capacity, as an officer or director of the tourism organization and participate, in a governmental capacity, in discussions or votes to establish a room tax to support the organization financially.

Members of the tourism organization

[5] In contrast to being an officer or director, membership alone in an organization, without other connection, does not make an official “associated” with that organization. However, we can foresee circumstances in which a member of the tourism organization may be a direct beneficiary of room tax revenues. Section 19.59(1), *Wisconsin Statutes*, provides that no local public official may use his or her public position or office to obtain financial gain, anything of substantial value, or a substantial benefit for private benefit or take any official action substantially affecting a matter in which the official

³ Section 19.42(11), *Wisconsin Statutes*, provides:

19.42(11) “Organization” means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual or body politic.

⁴ Section 19.42(2), *Wisconsin Statutes*, provides:

19.42(2) “Associated”, when used with reference to an organization includes any organization in which an individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent.

⁵ One purpose of the Ethics Code’s restrictions is to prevent a public official from using a position of public trust for private benefit. The proscribed benefit can be personal, familial, or for an organization in which the official has a personal and substantial interest. A related purpose of the restrictions is to enhance the public’s confidence that government decision makers are not being influenced by financial considerations that are private, either to themselves, their families, or organizations in which they have a substantial personal interest. The position of an alternate director with respect to these considerations appears no different than that of a director.

has a substantial financial interest. To the extent that the tourism organization uses revenues for the substantial benefit of a specific business, then a member of a local unit of government's legislative body whose business is the beneficiary of that expenditure should not participate in discussions or votes to establish a room tax when the organization will receive a substantial portion of the room tax receipts. *Cf. Heffernen v. City of Green Bay*, 64 N.W.2d 216, 220 (1954) (there is a long-established public policy in this state "that a public officer in discharge of his duties as such shall be absolutely free from any influence other than that which grows out of the obligations that he owes to the public at large."); *Edward E. Gillen Co. v. City of Milwaukee*, 183 N.W. 679 (1921).

Advice

[6] The Ethics Board advises that a member of a local unit of government's legislative body should not simultaneously serve, in a private capacity, as an officer or director of the tourism organization and participate, in a governmental capacity, in discussions or votes to establish a room tax to support the organization financially.

[7] The Ethics Board further advises that a member of a local unit of government's legislative body to whose business the tourism organization will furnish a substantial benefit through the use of room tax revenues should not participate in discussions or votes to establish a room tax-.

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